CASE SUMMARY

Case 1: No warning on surcharge for overstaying in public housing unit

The Complaint

The complainant complained against the Housing Department ("HD") for charging her, without warning, three times normal rent for overstaying in a public housing unit.

The Event

2. In January 2006, the complainant, a public housing tenant, applied to HD's property management office for a Certificate of Eligibility for Purchase of a Home Ownership Scheme ("HOS") Flat. She purchased an HOS flat in the secondary market in May. In mid-September, HD informed her that she should have vacated her public housing unit within 60 days after purchasing the HOS flat. For overstaying in the unit since July, she was required to pay triple rent according to the Housing Authority policy.

3. The complainant considered this unfair as she had never been informed of this policy. In fact, during the period of July to September 2006, she had paid normal rent and HD had neither told her that she had underpaid nor asked her to move out. She took this as tacit agreement for payment of normal rent. In late September, she vacated the unit and reluctantly paid the balance of the triple rent.

HD's Explanation

4. The HOS application form that the complainant signed contained a statement that she would surrender her public housing unit within 60 days after completion of the assignment.

5. In May 2006, the complainant purchased an HOS flat. However, she did not surrender her public housing unit. In September, HD's tenancy

management office discovered her overstaying in the unit.

6. HD then informed the complainant that she should have surrendered the unit by the end of June. For the period overstayed, she had to pay a Use and Occupation Fee three times normal rent, plus rates. This is to avoid double subsidy for overstaying by public housing tenants who own HOS flats.

7. HD explains that as the requirement of surrendering public housing units is stated in the HOS application form, the Department did not inform her separately of the triple rent requirement.

Our Observations and Comments

8. We acknowledge that the complainant had the obligation to surrender her unit as stipulated in the HOS application form. We also agree that HD should charge higher rents in cases of overstaying to avoid double subsidy.

9. However, while the policy of charging higher rents may have been publicised elsewhere, the quantum (i.e. triple rent requirement) is not mentioned anywhere in the HOS application form. We consider HD to have a duty to give tenants fair and clear warning of the consequences of overstaying, both at the time of HOS application and close to the expiry of the 60-day limit.

10. Moreover, we question the lack of coordination or communication between the property management office and tenancy management office, both under HD. It is surprising that the latter office did not notice the complainant's overstaying until after three months.

Conclusion

11. The complaint about HD's lack of warning is, therefore, **substantiated**.

Recommendations

12. The Ombudsman recommends that HD:

(i) incorporate the triple rent requirement into the HOS application form to inform tenants and also instruct staff to remind them;

(ii) improve the coordination and communication between its property management offices and tenancy management offices; and

(iii) make it a standard practice, towards the expiry of the 60-day limit, to issue a reminder to tenants concerned to surrender their units and to remind them of the consequences of non-compliance.

Office of The Ombudsman
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